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August 1, 2007

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS  
ON THE  
SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT

PROJECT NAME: Depot Business Park (formerly Westminster Business Park)  
PROJECT MUNICIPALITY: Westminster  
PROJECT WATERSHED: Nashua  
EEA NUMBER: 8074  
PROJECT PROPONENT: Westminster Business Park, LLC  
DATE NOTICED IN MONITOR: June 25, 2007

As Secretary of Energy and Environmental Affairs, I hereby determine that the Supplemental Environmental Impact Report (Supplemental EIR) submitted on this project **does not adequately and properly comply** with the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and with its implementing regulations (301 CMR 11.00). Therefore, I am requiring that the proponent submit a Second Supplemental Environmental Impact Report (SSEIR) to respond to the issues identified in this Certificate.

Project Description

As presented in the Five-Year Update and consistent with the NPC, the project consists of approximately 1.57 million square feet (sf) of industrial and warehouse space located on 312± acres in Westminster. The project site is bounded by the Boston & Maine Railroad, North Common Road and Batherick Road. The project will create 1,787 new parking spaces and will generate approximate 6,800 vehicle trips be day. A subdivision roadway, approximately 9,250 feet long is proposed to traverse the project site from Batherick Road to North Common Road. The project has received several local subdivision approvals from the Westminster Planning Board for various phases of the roadway, as well as earth

removal permits issued by the Westminster Board of Selectmen. The project site contains an area of historical and archaeological significance, the Cowee-Smith Complex (MHC #WST-HA-9), identified by the Massachusetts Historical Commission (MHC).

### Project History

The project has a lengthy history under MEPA, commencing in 1989 with the filing of an Environmental Notification Form (ENF) for a commercial rock crushing and gravel operation in advance of an industrial park development, with a full build-out potential of about 1,680,000 square feet (sf). The project categorically required the preparation of an Environmental Impact Report (EIR). In 1990, a Draft Environmental Impact Report (DEIR) was prepared in response to the scope issued by the Secretary of Environmental Affairs. Subsequent documents prepared included a Final Environmental Impact Report, (FEIR) submitted in December 1990, and a Supplemental Final Environmental Impact Report, (SFEIR) submitted in 1991. Each document and subsequent scope strived to clarify the project, potential environmental impacts, and necessary mitigation.

While the SFEIR was found to be adequate in 1991, there were several issues that were considered to be unresolved, including aspects of traffic and generation mitigation, archaeological/historical impacts, wetlands impacts, wastewater disposal, and drainage. Therefore, given the necessary resolution of environmental impact assessments and the challenges associated with a project with a lengthy build-out schedule, the Secretary of Environmental Affairs directed the proponent to prepare and submit Five-Year Updates for public review. These updates were given the status of an EIR and were meant to allow for ongoing analyses of environmental impact issues, present revised and updated Section 61 findings, and resolve those issues unaddressed by the Certificate on the SFEIR.

In 2001, the proponent filed a Notice of Project Change (NPC) to reduce the overall build-out of the industrial park by 60,000 sf to 1.57 million sf, to reduce proposed land alteration from 236 acres to 164 acres, and to relocate the subdivision roadway. Between the period of 1989 and 2001 the project changed ownership, and then changed ownership again in 2003. Other than this 2001 filing, no other submissions have been made to the MEPA office, including any Five-Year Updates as directed by the Certificate on the SFEIR. This current filing appears to be the first update submitted by the proponent.

Throughout MEPA review the proponent has anticipated a phased build-out period of approximately 17-25 years to complete all the earth removal and building construction. Based upon the information contained in the Five-Year Update, it appears that, to date, only approximately 24,000 sf of floor space has been constructed, while earth removal and rock crushing activities have continued on-site since 1991. It is unclear from the Five-Year Update the volume and extent of earth removal activities that have been completed to date. Previous MEPA filings stated that the proposed building program was to be directly correlated with the rate of progress of the subdivision development and earthworks operations in an effort to avoid the advancement of mining operations without corresponding lot development.

### Jurisdiction and Permitting

The project required the preparation of a mandatory EIR because it exceeded MEPA thresholds (as in effect in 1989) associated with the number of new traffic trips, new parking spaces and land alteration. The project, as currently proposed, continues to exceed these thresholds. Additionally the project requires several State Agency actions, notably the issuance of a State Highway Access Permit from the Massachusetts Highway Department (MassHighway). A Construction General Permit issued by the United States Environmental Protection Agency (U.S. EPA) under the National Pollutant Discharge Elimination System (NPDES) program will also be required. Previous MEPA filings indicated the requirement of both a Section 401 Water Quality Certificate and Sewer Connection/Extension Permit from the Massachusetts Department of Environmental Protection (MassDEP), and a Section 404 Programmatic General Permit from the United States Army Corps of Engineers (U.S. ACOE). It is unclear from the Five-Year Update whether these permits are still required based upon the current project master plan.

Because the proponent is not seeking financial assistance from the Commonwealth, MEPA jurisdiction extends to those aspects of the project that may have significant environmental impacts, land alteration and traffic, or those that are within the subject matter of required or potentially required state permits.

### Review of the Five-Year Update

The Five-Year Update was classified as a Supplemental EIR and received an extended review and comment period as outlined in 301 CMR 11.08(1). As outlined in the Certificate on the SFEIR (1991), the Five-Year Update was to include project status, permitting and mitigation updates; reconsider and expand upon analyses of environmental impact issues; and answer unresolved issues from the SFEIR. The Five-Year Update provided a discussion of the local permitting process, an update on the Cowee-Smith complex and archaeological studies, and a status report on traffic mitigation commitments outlined in the 1991 Section 61 Findings. The Five-Year Update included a conceptual master plan, which indicated the proposed location of buildings, the subdivision roadway, and on-site wetland areas and buffer zones. The Five-Year Update did not provide revised Section 61 Findings, included a master plan configuration different from that reviewed in the 2001 NPC, and did not address the unresolved issues outlined in the 1991 Certificate on the SFEIR.

The purpose of MEPA review is to ensure that a project proponent studies feasible alternatives to a proposed project; fully discloses environmental impacts of a proposed project; and incorporates all feasible means to avoid, minimize, or mitigate Damage to the Environment as defined by the MEPA statute. The difficulty presented in the Five-Year Update is the lack of development within the timeframe indicated in the EIRs. Sixteen years have passed since the issuance of the Certificate on SFEIR. Additionally, within the last 16 years, numerous environmental regulations, policies and design standards have been modified and it is unclear, on a master plan scale, how this project complies with these requirements and has sufficiently incorporated all feasible means to avoid, minimize or mitigate Damage to

the Environment. I do not wish to place an undue hardship on the proponent and require the proponent to commence the MEPA process again with the filing of a new ENF. However, given the length of time since the initial review, the proponent must strive to provide a high quality supplemental Five-Year Update document (which will be given the status of a Supplemental EIR) that clarifies the project and its environmental impacts in accordance with the Scope outlined below.

## SCOPE

### General

The Second Supplemental EIR (SSEIR) should address the items outlined in the following scope, in addition to those questions posed in the 1991 Certificate on the SFEIR. This SSEIR should be submitted as soon as feasible for review in accordance with the original intent of timely project updates on a five year basis.

### Project Description and Permitting

The SSEIR should include a clear and concise summary of the proposed project. I encourage the proponent to use the ENF form as a guide to assist in the preparation of the project description with regard to content. The SSEIR should include revised calculations of impervious area, volume and type of earth removal, wetland impacts, wastewater generation, water usage, traffic trips, etc. to effectively describe the current master plan. A project timeline should be included that outlines schedules for building construction and earth removal and graphically depicts the location of these impact areas. Finally, the SSEIR must provide a detailed existing conditions summary of buildings and roadways that have been constructed to date, those that have been permitted, and those to be permitted and built.

The SSEIR should also include a summary and status of all the required State and Federal permits necessary to achieve the master plan build-out of the project. It is unclear from the Five-Year Update as to whether a Section 401 Water Quality Certificate is still required from MassDEP, or a Section 404 PGP from the U.S. ACOE, along with other State permits. Additionally, the proponent must clarify if a sewer extension/connection permit is required for the master plan given the recently amended MassDEP sewer permitting requirements. I encourage the proponent to work with these permitting agencies to resolve these issues.

### Land Alteration/Earth Removal

The SSEIR should include an estimate of the volume and location of earth removal that has occurred to date, along with a separate graphic that depicts these areas, along with existing and proposed grades. It is unclear from the Five-Year Update how the location and volume of earth removal has changed since the 1991 EIR or 2001 NPC given the reconfiguration of the subdivision roadway and buildings. The SSEIR should clarify these changes. Additionally, the SSEIR should include a revised earth removal timeline and address the relationship of earth removal activities to the construction of buildings on individual building lots. Finally, the SSEIR should summarize the types of earth removal activities or on-site processing that is taking place on-site.

### Historical/Archaeological

The project site contains a known area of historical and archaeological significance, the Cowee-Smith Complex (MHC #WST-HA-9). Areas of proposed traffic mitigation improvements may also contain historic or archeological resources. The Five-Year Update noted that Parcel A, as indicated on the updated Master Plan, is proposed to be donated to the Town of Westminster and that a Preservation Restriction is proposed for the parcel. I acknowledge the efforts undertaken by the proponent in recent years to survey the Cowee-Smith Complex and the subsequent offer to establish a restriction to ensure its ongoing preservation.

The proponent should take steps to provide the MHC with the supplemental materials requested in their comment letter in a timely fashion. The SSEIR should provide a summary of archaeological review studies conducted in association with the project and provide a progress report of cooperative efforts between the proponent and MHC. The proponent should prepare an archaeological site avoidance and protection plan, as originally requested in 2001 by MHC. The contents of this plan should be prepared in accordance with the direction included in the MHC comment letter on the Five-Year Update.

As part of the SSEIR the proponent will be required to prepare updated Section 61 Findings for each State permit. These Section 61 Findings should include mitigation conditions to address the historic and archaeological aspects of the project, as applicable. Specifically, the applicable Section 61 Findings (MassHighway or MassDEP) could incorporate the Preservation Restriction, the protection plan for Parcel A, and/or applicable comments as may be received from MHC subsequent to review of the pending historical and archaeological study of the roadway improvement areas.

### Stormwater

While the Five-Year Update provided a general summary of local wetland filings and the provision of stormwater Best Management Practices (BMPs), the master plan does not indicate the location of these BMPs, nor does it address how these facilities may have been relocated or redesigned given modifications to the master plan layout. It appears that the stormwater management system for Depot Business Park has been master planned; however, no comprehensive update on the stormwater management system has been provided for MEPA review since 1991. The SSEIR should summarize the site stormwater master plan and include a discussion of compliance with MassDEP's Stormwater Management Policy (SMP), provide conceptual designs and locations of BMPs (i.e. detention or retention basins and water quality inlets), and address how project phasing may impact the effectiveness of stormwater management on-site. Previous MEPA Certificates noted the need for a comprehensive operations and maintenance plan for the stormwater BMPs, particularly given the ongoing intensive earth removal activities on-site. The SSEIR should provide such a plan and discuss current practices in place to limit erosion and sedimentation, as well as the management of stormwater flows during earth removal operations. The SSEIR should clarify if temporary stormwater management BMPs will be utilized on-site and how these facilities may transition into permanent facilities or be eliminated during subsequent phases of development.

### Wetlands

It appears that impacts to wetland resource areas have been reduced in comparison to MEPA documents submitted in 1991. The SSEIR should clarify how the earth removal activities and building and roadway construction will be performed in a manner that is consistent with the Wetlands Protection Act and associated regulations. The SSEIR should provide a revised summary of impacts based upon the currently proposed roadway and building alignment for each type of wetland resource area (or buffer zone) that may be impacted. If replication is necessary, the SSEIR should conceptually outline the location of these replication areas and at what ratio replication rates can be accomplished. The SSEIR should include a discussion of how the master plan will be completed in accordance with MassDEP's guidelines pertaining to wetland stream crossings. Furthermore, the SSEIR should confirm that the proposed wetland impacts or stormwater management BMPs will not detrimentally affect the presence of Eastern Brook Trout in adjacent receiving wetlands and streams.

### Wastewater

The SSEIR should include an updated summary of wastewater generation associated with the project and confirm that sufficient wastewater capacity is available through the Town of Westminster and its agreement with the City of Fitchburg for wastewater treatment. The SSEIR should show the location of the sewer main within the project site, as well as any off-

site improvements. While MassDEP has indicated that a sewer connection permit has been issued for a portion of the project site, it is unclear where this existing sewer main is located and where it connects to the larger system for the Town of Westminster. Clarification of this matter is necessary, as previous MEPA filings put forth numerous resolutions to wastewater management for the Depot Business Park and it is unclear which alternative was constructed between 1991 and the present.

Additionally, the Town of Westminster is currently preparing its Comprehensive Wastewater Management Plan (CWMP). The SSEIR should discuss whether or not wastewater treatment for Depot Business Park has been considered within this draft CWMP and whether or not the project site is located within an identified Priority Needs Area. While the project may no longer require a sewer connection permit from MassDEP due to anticipated project flows (which must be clarified), the project may need a sewer extension permit to accommodate the master planned project. The proponent should work with MassDEP to determine if a sewer extension permit will be required and to review the draft CWMP. The draft CWMP may also be available from the Town of Westminster for review. The proponent should be aware that, as the project moves forward, if a sewer extension permit must be issued by MassDEP, an NPC and Phase I Waiver request may be required relating to the concurrent review of the draft CWMP for the Town of Westminster (EOEEA No. 13919).

### Water Supply

The EIRs state that the project site is located near private drinking water wells and the property is located on and adjacent to a portion of an extensive aquifer associated with the Whitman River. The SSEIR should provide responses to those unresolved water supply issues outlined in the 1991 Certificate on the SFEIR. The SSEIR should outline the steps presently undertaken by the proponent during the earth removal process and those to be implemented during the building and roadway construction phase to reduce impact to adjacent drinking water and groundwater supplies.

### Transportation

The Five-Year Update provided a summary of the applicable Section 61 Findings from MassHighway (issued in 1991). The proponent has indicated that several of the traffic mitigation commitments that were to be completed prior to the generation of any truck traffic have not been completed, despite truck traffic trips traveling to and from the site in association with the earth removal activities. Additionally, the Five-Year Update noted that the proponent is unsure if modifications to the Depot Road Bridge have been implemented in accordance with the Section 61 Findings. Again, this mitigation was required prior to the generation of any truck traffic. The proponent has forwarded to MassHighway a Functional Design Report (FDR) and 25 percent design plans for improvements at the Route 2A/Batherick Road/Depot Road intersection, including the installation of a traffic signal and left-turn lanes for Batherick Road, Route 2A eastbound and westbound, and Depot Road. Some components of this intersection improvement were required prior to the generation of

truck traffic, while other components were required to be implemented prior to generating more than 2,350 vehicle trips. It appears that the proponent is proposing to “split the difference” at this intersection based upon the scale of commitments and the phasing requirements outlined in the Section 61 Findings. The proponent remains committed to implementing those traffic mitigation measure tied to subsequent phases of the project when build-out will lead to increased traffic trips in the area of the project site.

Unfortunately, given the length of time since the preparation of a substantial traffic study, it is no longer clear what the existing conditions within the project area are, how the master plan build-out of the project will impact area roadways, and whether or not the measures outlined in the 1991 Section 61 Finding are sufficient to effectively mitigate the impact of this project. In accordance with the request from MassHighway, the SSEIR should include a limited revised traffic study, prepared in conformance with the EOEEA/EOT Guidelines for EIR/EIS Traffic Impact Assessments, that reevaluates the traffic impacts of the current excavation/earth removal activity on the state highway system and surrounding community. In addition, the proponent should clearly distinguish between the previously approved and, if any, newly proposed land use activities.

The SSEIR must consider revised mitigation measures to address the traffic impacts associated with the existing and future traffic. The revised mitigation is not expected to replace, but is expected to supplement, the original improvements outlined in the 1991 Section 61 Findings. The SSEIR should clearly demonstrate which of the Section 61 Finding mitigation has been completed, and by whom (i.e. MassHighway, proponent, or other developers). In addition, the SSEIR should provide a clear commitment to implement the mitigation measures and should describe the timing of their implementation based on the phases of the project. Finally, I strongly encourage the proponent to meet with the MassHighway District 2 Office and EOT’s Public/Private Development Unit prior to submitting the limited revised traffic study as part of the SSEIR.

### Mitigation

The SSEIR should include a summary and update of proposed mitigation measures. Draft Section 61 Findings for each State agency that will issue permits for the project should be included in the document. The draft Section 61 Findings should contain clear commitments to implement mitigation measures, estimate the individual costs of each proposed measure, identify the parties responsible for implementation, and a schedule for implementation.

### Response to Comments

The SSEIR should contain a copy of this Certificate and a copy of each comment received. The SSEIR must present additional narrative and/or quantitative analysis necessary to respond to the comments received, to the extent that they are within MEPA jurisdiction.



Circulation

The SSEIR should be circulated in compliance with Section 11.16(3) of the MEPA regulations and copies should be sent to any state agencies from which the proponent will seek permits or approvals. A copy of the SSEIR should be made available for review at the Westminster Public Library

August 1, 2007  
Date



Ian A. Bowles

Comments received:

- 06/29/2007 Massachusetts Historical Commission
- 07/25/2007 Massachusetts Department of Environmental Protection – CERO
- 07/25/2007 Watchdogs for an Environmentally Safe Town (W.E.S.T.)
- 07/26/2007 Executive Office of Transportation and Public Works.

IAB/HSJ/hsj